UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
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NEW YORK, NY 10007-1866

COPY

APR 11 2016

Honorable Kenneth E. Mapp
Office of the Governor
Government House
Charlotte Amalie, VI 00802

Dear Governor Mapp:

Thank you for your letter of January 19, 2016 regarding the former HOVENSA facility. I too would like to thank you and your staff for all the hard work that has arisen from the HOVENSA bankruptcy. I am also pleased that the United States and the Government of the Virgin Islands (GVI) have been able to resolve the issues that were outstanding concerning the environmental response trust that was created.

As you are aware, the former HOVENSA facility is subject to a Resource Conservation and Recovery Act, as amended ("RCRA") permit, which was issued in 1999 and remains in effect. The Environmental Protection Agency (EPA) plans to renew the existing permit next year. As you state in your letter, HOVENSA is the only permittee on the permit. This, however, appears to have been an oversight since RCRA and its implementing regulations require that both owners and operators be on such permits, and the GVI owns a portion of the property ("the submerged lands") on which two operating hazardous waste management units are located.

Section 3005(a) of RCRA[1] and the permitting regulation set forth at 40 C.F.R. § 270.1(c) require that owners and operators of hazardous waste management units have permits. The definition of an "owner" for the purposes of EPA's permitting requirements does not provide an exception for states, territories or "innocent" owners. See 40 C.F.R. § 270.2. In addition, the overarching definition of "owner" set forth in 40 C.F.R. 260.10[2] refers to a "person who owns a facility or *part of a facility*." (emphasis added.) A "person" is then defined to include a "State," which is then defined to include "the Virgin Islands." See 40 C.F.R. § 260.10. Because the GVI owns lands at the former HOVENSA facility that contain hazardous waste management units, RCRA and the underlying EPA regulations require that the GVI be on the permit. My staff has made this point in a number of phone calls with the GVI's legal counsel.

Your letter requested that the GVI-owned property be removed from the geographic scope of the permitted facility. As EPA and DOJ explained in conversations with GVI representatives, this cannot be done. The definition of "facility" includes "all contiguous land" used for treating, storing or disposing of hazardous waste, and for the purpose of implementing corrective action, "all contiguous property under the control of the owner or operator." 40 C.F.R. § 260.10. The GVI-owned land, which

[1] Section 3005(a) requires EPA to promulgate regulations "requiring *each* person owning or operating" a treatment, storage or disposal facility to have a hazardous waste RCRA permit. (emphasis added.) The regulations for EPA's hazardous waste permit program are largely set forth in 40 C.F.R. Part 270.

[2] The definitions set forth in 40 C.F.R. § 260.10 apply to the RCRA regulations set forth in 40 C.F.R. Parts 260-273.

has two regulated hazardous waste management units that are subject to closure and post closure requirements and areas (including the groundwater) that require corrective action (including further investigation), cannot be removed from the permit, or otherwise exempted from the obligation to obtain a RCRA permit.

In your letter, you also requested that EPA place Petróleos de Venezuela, S.A. ("PDVSA") or Hess Corporation on the permit in lieu of the GVI. However, neither PDVSA nor Hess are presently owners or operators of the facility.

We understand the GVI's concerns about being liable for additional corrective actions in the future. We all need to work to fully remediate the site so the legacy of pollution is addressed.

If you have further questions, please contact me at (212) 637-5000.

Sincerely,

Judith A. Enck

Judith A. Enck
Regional Administrator

cc: Commissioner Dawn Henry, DPNR